Dato' V Kanagalingam v Tommy Thomas & Anor

HIGH COURT (KUALA LUMPUR) — SUIT NO S4–23–19 OF 1996
RAHMAH HUSSAIN J
18 JUNE 1997

Civil Procedure *— Damages — General damages — Quantification of general damages — General damages quantified in the indorsement to the writ of summons and in the statement of claim — Whether general damages could be quantified — Whether quantification of damages was justified*

The defendants applied to strike out the words 'amounting to RM30m' appearing in the indorsement in the writ of summons and in the statement of claim in an action for defamation. The plaintiff maintained that there were no specific statutes and case law which prohibit the quantification of general damages, while the defendants' main contention was that the amount of damages as stated in the indorsement in the writ of summons and in the statement of claim was excessive and should not be quantified. The defendants raised a preliminary issue before the senior assistant registrar that this court had in the earlier case of *Sri Kuala Lumpur v Dian Lai* (Case No S4–23–113 of 1996) ('*Sri Kuala Lumpur*') ruled to the effect that general damages should not be quantified. The senior assistant registrar allowed the application. The plaintiff appealed.

Held, allowing the appeal:

(1) In the light of authorities cited before the court in this case which the court did not have in *Sri Kuala Lumpur,* the latter decision was overruled. Furthermore, in this case quantification was justified as the claim for damages included aggravated and/or exemplary damages. This obviated the element of surprise or shock to the defendants and would also prevent the plaintiff from asking for a more exorbitant figure at the end of the trial (see p 235A–B); *Sri Kuala Lumpur v Dian Lai* (Case No S4–23–113–96, unreported) overruled; *Spedding v Fitzpatrick* (1888) CD 410, *Wong Eng v Chock Mun Chong & Ors* [1963] MLJ 204 and *Phillips v Phillips & Ors* (1878) 4 QBD 127 followed.

(2) Since there are no specific provisions on the relevant statutes — namely, the Defamation Act 1957 and the Rules of the High Court 1980 — which prohibit plaintiffs from quantifying general damages and the case laws cited had highlighted that general damages can be in fact quantified in certain cases, the plaintiff in the present case was thus justified in doing so (see pp 235I–236A); *Chattell v Daily Mail Publishing Co (Ltd)* (1901) 18 TLR 165, *Rustom K Karanjia & Anor v Krishnaraj Thackersey* AIR 1970 Bom 424, *Drane v Evangelou & Ors* [1978] 2 All ER 437 followed; *Tham Kwa Chin v Chong Hoong Sum* [1954] MLJ 161, *Raja Zam Zam v Vaithiyanathan* [1965] 2 MLJ 252, *British Transport Commission v Gourley* (1956) AC 185 and *London & Northern Bank Ltd v George Newnes* (1899) 16 TLR 433 not followed.

[Bahasa Malaysia summary

Defendan-defendan telah memohon untuk membatalkan perkataan-perkataan 'berjumlah kepada RM30 juta' yang muncul dalam pengindorsan writ saman dan dalam pernyataan tuntutan dalam tindakan untuk fitnah. Plaintif telah mengekalkan bahawa tidak ada statut dan undang-undang kes tertentu yang melarang pengiraan ganti rugi am, manakala hujah utama defendan adalah bahawa jumlah ganti rugi seperti yang dinyatakan dalam pengindorsan writ saman dan dalam pernyataan tuntutan adalah melampau dan tidak harus dikira. Defendan-defendan telah membangkit isu permulaan di hadapan penolong kanan pendaftar bahawa mahkamah ini, dalam suatu kes sebelum ini iaitu *Sri Kuala Lumpur v Dian Lai* (Kes No S4–23–113 tahun 1996) ('*Sri Kuala Lumpur*') telah memutuskan bahawa ganti rugi am tidak harus dikira. Penolong kanan pendaftar telah membenarkan permohonan tersebut. Plaintif telah merayu.

Diputuskan, membenarkan rayuan:

(1) Memandangkan nas-nas yang dikemukakan di hadapan mahkamah dalam kes ini yang tidak dipunyai oleh mahkamah dalam *Sri Kuala Lumpur*, keputusan yang kedua itu ditolak. Lagipun, dalam kes ini, perkiraan berjustifikasi kerana tuntutan untuk ganti rugi termasuk ganti rugi terkilan dan/atau teladan. Ini telah menghapuskan unsur terperanjat ataupun terkejut kepada defendan-defendan dan juga akan mencegah plaintif daripada menuntut suatu jumlah yang melampau di penghujung perbicaraan (lihat ms 235A–B); *Sri Kuala Lumpur v Dian Lai* (Kes No S4–23–113–96, tidak dilaporkan) ditolak; *Spedding v Fitzpatrick* (1888) CD 410, *Wong Eng v Chock Mun Chong & Ors* [1963] MLJ 204 dan *Phillips v Phillips & Ors* (1878) 4 QBD 127 diikut.

(2) Oleh kerana tidak ada peruntukan spesifik berkenaan dengan statut yang relevan — iaitu, Akta Fitnah 1957 dan Kaedah-Kaedah Mahkamah Tinggi 1980 — yang melarang plaintif daripada mengira ganti rugi am dan undang-undang kes telah menegaskan bahawa ganti rugi am boleh juga dikira dalam kes-kes tertentu, maka plaintif dalam kes ini adalah berjustifikasi dalam berbuat demikian (lihat ms 235I–236A); *Chattell v Daily Mail Publishing Co (Ltd)* (1901) 18 TLR 165, *Rustom K Karanjia & Anor v Krishnaraj Thackersey* AIR 1970 Bom 424, *Drane v Evangelou & Ors* [1978] 2 All ER 437 diikut; *Tham Kwa Chin v Chong Hoong Sum* [1954] MLJ 161, *Raja Zam Zam v Vaithiyanathan* [1965] 2 MLJ 252, *British Transport Commission v Gourley* (1956) AC 185 dan *London & Northern Bank Ltd v George Newnes* (1899) 16 TLR 433 tidak diikut.

Notes

For cases on damages, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1097–1103.

Cases referred to

British Transport Commission v Gourley [1956] AC 185 (not folld)
Carson v John Fairfax & Sons Ltd (1993) 113 ALR 577
Drane v Evangelou & Ors [1978] 2 All ER 437 (folld)
London & Northern Bank Ltd v George Newnes (1899) 16 TLR 433 (not folld)
Modera v Modera and Barclay (1893) 10 TLR 69 (refd)
Phillips v Phillips & Ors (1878) 4 QBD 127 (folld)
Raja Zam Zam v Vaithiyanathan [1965] 2 MLJ 252 (not folld)
Rustom K Karanjia & Anor v Krishnaraj Thackersey AIR 1970 Bom 424 (folld)
Spedding v Fitzpatrick (1888) 38 Ch D 410 (folld)
Sri Kuala Lumpur v Dian Lai (Case No S4–23–113–96, unreported) (overd)
Tham Kwa Chin v Choong Hoong Sum [1954] MLJ 161 (not folld)
Wong Eng v Chock Mun Chong & Ors [1963] MLJ 204 (folld)

Legislation referred to

Defamation Act 1957
Rules of the High Court 1980 O 18 r 19(1)(b), (c), O 22 r 1(1), O 78 r 4(1)

V Sivaparanjothi (*Peter Raj* with him) (*V Siva & Partners*) for the plaintiff.
Raja Aziz Addruse (*Karpal Singh* and *Darryl Goon* with him) (*Raja Darryl & Loh, Shearn Delamore & Co* and *Zainur Zakaria & Co*) for the defendant.

Cur Adv Vult

Rahmah Hussain J: This is an appeal against the senior assistant registrar's ('the SAR') decision in allowing the defendant's application to strike out the words 'amounting to RM30m' (encl 23) appearing in paras 1 and 2 of the indorsement on the writ of summons and para 14(1) and (2) in the statement of claim. The defendants in Civil Suit No S4–23–44–96 are also seeking to strike out the words 'amounting to RM15m' appearing in paras A(1), (2), B(1) and (2) of the indorsement on the writ of summons and paras 15(1) and (2) of the statement of claim (encl (7)).

Both applications for striking out were made under the provisions of O 18 r 19(1)(b) and (c) of the Rules of High Court 1980 ('the RHC'), vis-a-vis:

(1) that the said words are scandalous, frivolous and/or vexatious; or

(2) it may prejudice, embarrass or delay the fair trial of the action.

The defendants raised a preliminary issue before the SAR that this court had decided in the earlier case of *Sri Kuala Lumpur v Dian Lai* (S4–23–113 of 1996, unreported) ('*Sri Kuala Lumpur*'s case') to the effect that general damages should not be quantified.

The defendants' main contention was that the amount of damages as stated in the indorsement of the writ of summons and statement of claim is excessive and should not be quantified, while the plaintiffs maintained that there are no specific statutes and case laws which prohibit the quantification of damages.

Incidentally, it was agreed between the parties that my decision in this appeal will be followed in a similar application in two other suits, that is Suit Nos 23–39 of 1996 and S4–23–44 of 1996.

The plaintiff's present suit is one of defamation. It was the plaintiff's submission that the amount of general damages should be quantified for the following reasons:

(i) The relevant statutes that govern such applications do not prohibit the quantification of damages. They are, namely, the Defamation Act 1957 and the RHC. There is not even a practice direction in this country which prohibits plaintiffs from quantifying the general damages sought. Therefore, the plaintiff was entitled to plead a specified amount.

(ii) There are case laws which support the plaintiff's contention that damages can be quantified. He then cited the following authorities, namely:

(a) *Chattell v Daily Mail Publishing Co (Ltd)* (1901) TLR 165

This was an action for libel, whereby the plaintiff claimed damages in the amount of £1,000. It was held:

> The statement of claim in the action claimed £1,000 damages, and no defence being delivered, interlocutory judgment was signed, and the question as to the amount of damages was tried before the Under-Sheriff and a special jury. The jury returned a verdict for the plaintiff for £2,500. The plaintiff thereupon without amending the statement of claim signed judgment for this amount. The defendants applied for a new trial upon the ground that the damages were excessive.

(b) *Rustom K Karanjia & Anor v Krishnaraj Thackersey* AIR 1970 Bom 424

The plaintiff claimed general damages of Rs3m on the ground that he had been injured in his character, credit, reputation and in the way of his business and had been brought into public hatred, contempt and ridicule. On appeal by the first and second defendants, the appeal was partly allowed, the decree of the trial court was confirmed with the only modification that for the amount of Rs3m, Rs1.5m would be substituted.

(c) *Drane v Evangelou & Ors* [1978] 2 All ER 437

This was a claim for damages against the defendant for a tortious act. This matter was taken up to the Court of Appeal whereby the damages awarded by the court below was upheld. But the Court of Appeal did not comment on the quantification of damages. Even though this was not a direct case on libel but on tort, it can be applied by analogy as defamation is a tortious act.

(c) *Odgers' Principles of Pleadings and Damages* at p 245 wherein it was stated:

> In cases of unliquidated damages, it is usual to claim damages at large but if you wish to insert a definite amount, be sure you claim enough, as the plaintiff cannot recover more than the sum claimed on his writ or statement of claim, unless the judge gives leave to amend.

(iii) The established principle of pleadings requires the plaintiff to plead with sufficient particularity. In support of his contention, he referred to three cases, that is:

(a) *Spedding v Fitzpatrick* (1888) 38 Ch D 410, where it was held (at the same page):

> ... that under the present system, the court will oblige a party to give such information as to the nature of his case as is requisite to prevent his opponent from being taken by surprise at the trial ..., and the names of the persons by whom they were done or made.

(b) *Wong Eng v Chock Mun Chong & Ors* [1963] MLJ 204 at p 206, whereby it was stated thus:

> As Lord Normand stated in the House of Lords in the case of *Esso Petroleum Co Ltd v Southport Corp* [1955] 3 All ER 864:
>
> > 'The function of pleadings is to give fair notice of the case which is to be made so that the opposing party may direct his evidence to the issue disclosed by them.'

(a) *Philipps v Philipps & Ors* (1878) 4 QBD 127 where it was stated at p 138:

> The plaintiff must state the facts which are material for the purpose of enabling the defendant to go to trial, knowing what the issue he really has to meet is, and what is the question between him and the plaintiff, so that he may not be there taken by surprise, and the real question between the parties fail to be decided in consequence of insufficient allegations of the plaintiff. The statement of claim, of necessity, must set out all the facts material to prevent the defendant being taken by surprise, because it is the first pleading, and that which ought to be referred to for the purpose of seeing whether there is a cause of action.

To further strengthen his contention, he referred to O 22 r 1(1) of the RHC, which provides as follows:

> In any action for a debt or damages any defendant may at any time after he has entered an appearance in the action pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

According to learned counsel, this provision therefore allows the quantification of damages. He added that O 78 r 4(1) of the RHC also

provides for payment into court in an action for libel or slander. Thus, unless damages are quantified, such provision cannot take effect.

On the other hand, the submission by learned counsel for the first defendant was that general damages cannot be quantified for the following reasons: firstly, this court had decided in an earlier case — which was also conducted by Mr Karpal Singh (*Sri Kuala Lumpur*'s case) — whereby the plaintiff was not allowed to quantify the general damages. Secondly, the authorities as cited by learned counsel for the plaintiff in this case were not applicable as in those cases there was no objection raised as regards the quantification of damages. Thirdly, there were authorities to prove that quantification of general damages is not allowed, namely:

(a) *Tham Kwa Chin v Choong Hoong Sum* [1954] MLJ 161; and

(b) *Raja Zam Zam v Vaithiyanathan* [1965] 2 MLJ 252

This was a claim for personal injury due to road accident. The plaintiff claimed general damages for injuries sustained in the sum of $30,000. Special damages were not claimed. Raja Azlan Shah (as he then was) in *Raja Zam Zam v Vaithiyanathan* observed that:

> This is a peculiar way of claiming general damages. It is not the present practice to specify the amount of the general damages in the pleadings.

Learned counsel for the first defendant added, as was said by Lord Goddard in *British Transport Commission v Gourley* [1956] AC 185 at p 206:

> In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damages which has to be specially pleaded and proved. ... Secondly, there is general damage which the law implies and is not specially pleaded.

Learned counsel for the second defendant's submission was that firstly, quantification of damages is not allowed in English cases. He referred to two authorities:

(a) The Supreme Court Practice 1995 (Vol 1)
London & Northern Bank Ltd v George Newnes (1899) 16 TLR 433, per Lord Vaughan William LJ:

> Where the damages claimed are unliquidated, the plaintiff need not insert a specific figure, but may claim damages generally ... .

(b) Atkin's Encyclopaedia of Court Forms Vol 32 (1994 Issue) at p 28:

> General damages: Particulars of general damages, ie unliquidated or unascertained damages, are not required to be specifically pleaded: *London & Northern Bank Ltd v George Newnes* (1899) 16 TLR 433.

At the end of the submission, I made the following decision.

In the light of the new authorities cited to me by learned counsel for the plaintiff in this case and which I did not have the benefit of assisting me when I made my decision in Case No S4–23–113 of 1996, I feel it is only proper for me to overrule my earlier decision in the said case. Furthermore, in this case, the quantification is justified as the claim for damages included aggravated and/or exemplary damages. This will obviate the element of surprise or shock for the defendants and will also prevent the plaintiff from asking for a more exorbitant figure at the end of trial. In the circumstances, the appeal is allowed with costs to be taxed as agreed upon between parties.

I was fortified in overruling my earlier decision by the case of *Carson v John Fairfax & Sons Ltd* (1993) 113 ALR 577. In that case, the trial judge refused to accept the view that awards for pain and suffering in personal injury actions provide any guidance as to what is a reasonable award of damages in a defamation action. At p 629, it was stated:

> Awards in personal injury cases and defamation actions serve different purposes, have different elements and different histories. They are not comparable. I think that it is a mistake to believe that the pain and suffering component of a personal injury award can be isolated from the other components of that award and then compared to an award of compensatory damages in a defamation action.

Another case which I took into consideration before coming to such a decision was *Modera v Modera and Barclay* (1893) 10 TLR 69. In *Odgers' Principles of Pleadings and Damages*, it was stated:

> In cases of unliquidated damages, it is usual to claim damages at large but if you wish to insert a definite amount, be sure you claim enough as the plaintiff cannot recover more than the sum claimed on his writ or statement of claim unless the judge gives leave to amend.

Furthermore, in *Sri Kuala Lumpur*'s case, the first plaintiff is a local private school while the second plaintiff is a schoolteacher of the said school.

In comparison, the plaintiff in this case is a prominent lawyer with vast experience and the plaintiffs in Suit No S4–23–44 of 1996 are big growing concerns. The publication of the alleged defamatory articles in *Sri Kuala Lumpur*'s case is also limited to national level as the said defamatory articles only appeared in the local newspapers and television stations; whereas in the present case, the publication of the alleged defamatory article appeared in the International Commercial Litigation which enjoys worldwide circulation and thus the effect is wider and also at international level.

Lastly, I agree with learned counsel for the plaintiff that the principles of pleadings at best serve as guidance only as to what needs to be particularized in the statement of claim, so as to obviate the element of shock and surprise. Further, since there are no specific provisions on the relevant statutes — namely, the Defamation Act 1957 and the RHC — which prohibit plaintiffs from quantifying general damages and the case laws cited by learned counsel for the plaintiff have also highlighted that

general damages can in fact be quantified in certain cases, I feel the plaintiff in the present case was thus justified in doing so.

Order accordingly.

Reported by Eugene Lee Hong Whye